

TOWN OF SELBYVILLE
BOARD OF ADJUSTMENT
MINUTES
August 30, 2022

Chairman/Mayor Murray called the Board of Adjustment Hearing to order at 5 o'clock pm. Member/Councilman Tingle and Member/Town Solicitor Mary Schrider-Fox were in attendance. Also in attendance was Town Administrator Stacey Long as Secretary of the Board

The meeting was properly advertised 15 days in advance in a publication of general circulation.

Visitors in attendance were the applicant Daniel Bunting of DCB Properties, Inc. No other visitors were in attendance.

The applicant presented his request to construct a residential dwelling on the subject property. Due to the oblong shape of the subject property and the angled rear property line, in order to construct a residential dwelling of a standard size, with a standard floor plan, and with the standard options (e.g., sun room, screened porch) offered by Applicant and other local contractors for projects located in the Town, Applicant is seeking to reduce the rear yard setback to 15 feet, rather than the 30 feet required by Section 200-35.G of the Zoning Code.

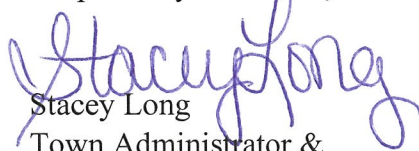
There were no letters received on the application in favor of or in opposition of the requested variance.

The finding of facts and decision of the Board of Adjustment is attached hereto.

Member/Councilman Tingle made a motion to approve the variance as requested. The motion was seconded by Member/Town Solicitor Mary Schrider-Fox and carried by all.

There being no further business, Member/Town Solicitor Mary Schrider-Fox made a motion to adjourn the hearing. The motion was seconded by Member/Councilman Tingle and carried by all.

Respectfully submitted,


Stacey Long

Town Administrator &
Secretary of the Board of Adjustment

**BEFORE THE BOARD OF ADJUSTMENT
OF THE TOWN OF SELBYVILLE**

IN RE:	:	
	:	
APPLICATION OF	:	DECISION
	:	
DCB PROPERTIES, INC.	:	

The Board of Adjustment of the Town of Selbyville convened at 5:00 o'clock in the afternoon, prevailing time, on Tuesday, August 30, 2022, at the Town Hall, 1 West Church Street, Selbyville, Sussex County, Delaware, to hear the application of DCB Properties, Inc. ("Applicant") for a variance from the 30 foot rear yard setback requirement imposed by Section 200-35.G of the Zoning Code for residential property owned by Applicant, located on Polly Branch Road, Selbyville, Delaware, and identified as Sussex County Tax Map and Parcel No. 533-16.00-81.01. Present for the Board of Adjustment were Clifton C. Murray, Mayor and Chair, and members Clarence W. Tingle, Jr., and Mary R. Schrider-Fox, Town Solicitor. Present as well were Stacey Long, Town Administrator and Secretary for the Board of Adjustment. Daniel Bunting appeared for Applicant and presented the application to the Board.

FINDINGS OF FACT

Applicant, DCB Properties, Inc., is the owner of residential real property located on Polly Branch Road, Selbyville, Delaware, and identified as Sussex County Tax Map and Parcel No. 533-16.00-81.01, within the corporate limits of the Town of Selbyville, Sussex County, State of Delaware (the "subject property"). The subject property is located in the R-4 Residential District, which has a 30 foot rear yard setback requirement imposed by Section 200-35.G of the Zoning Code.

The subject property is currently vacant and unimproved.

Applicant intends to construct a residential dwelling on the subject property. Due to the oblong shape of the subject property and the angled rear property line, in order to construct a residential dwelling of a standard size, with a standard floor plan, and with the standard options (e.g., sun room, screened porch) offered by Applicant and other local contractors for projects located in the Town, Applicant is seeking to reduce the rear yard setback to 15 feet, rather than the 30 feet required by Section 200-35.G of the Zoning Code.

After reviewing its desired plans with Delaware's Department of Transportation ("DelDOT"), Applicant has been advised by DelDOT that the driveway for the dwelling to be constructed on the subject property must be on the opposite side of the subject property than what Applicant has proposed, which will make satisfying a 30 foot rear yard setback even more difficult if constructing a standard size dwelling with a standard floor plan and standard options.

The subject property is located near the entrance to an approved, although not yet constructed, subdivision known as "Creekhaven". The subject property sits approximately 9 feet above the Creekhaven property.

The approved subdivision plan for Creekhaven includes a 30 foot landscaped buffer around the perimeter of the Creekhaven project, including the portion of the Creekhaven project that abuts the subject property. Each lot in the Creekhaven project, including the lots located nearest to the subject property, has a 20 foot rear yard setback.

Other approved residential projects located in the Town have rear yard setbacks less than 30 feet, such as Atlantic Lakes, which has a 10 foot rear yard setback for each individual lot in said project.

The Board received no comments concerning Applicant's variance request, either in person at the hearing or in writing.

CONCLUSIONS

Pursuant to Section 200-132. C. of the Zoning Code of the Town of Selbyville, the Board of Adjustment shall:

authorize upon appeal, in specific cases, such variance from the chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of the property, and so that the spirit of this chapter shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the chapter or Zoning Map.

Under Delaware case law, the Delaware Supreme Court has defined the two (2) types of variances, "use" variances and "area" variances. The Board of Adjustment v. Kwik-Check Realty, Inc., Del. Supr. 389 A.2d at 1289, 1291 (1978). That court indicated that "a use variance is a variance that changes the character of the zoned district by allowing the land to be used for a purpose otherwise proscribed by the zoning regulations." Id. However, an area variance "does not involve a prohibited use, and 'concerns only the practical difficulty in using the particular property for permitted use.'" Id. at 1291. The variance requested in this instance is an area variance to which the "exceptional practical difficulty" standard applies.

The Board concludes that the Applicant faces an exceptional practical difficulty in relation to its efforts to make a normal improvement to the subject property that is in keeping with similar residential construction in the Town, as the rear property line of the subject property is at an angle and DelDOT is requiring that the driveway be in a certain location.

The Board further concludes that Applicant's request for a 15 foot rear yard setback is the minimum necessary to accommodate the exceptional practical difficulty that it presently

faces and is similar to the approved rear yard setback for other residential projects located in Town.

The Board further concludes that the harm to Applicant, if the requested variance is not granted, will exceed any possible harm to neighboring properties, as there will continue to be a large amount of space between the residential dwelling to be constructed on the subject property and future neighbors in the Creekhaven project. More specifically, there will be 65 feet of open setback and landscaped buffer space between the residential dwelling to be constructed on the subject property and the nearest residential dwellings to be constructed in the Creekhaven project.

The Board further concludes that the spirit of the zoning regulations is met and substantial justice is done by the granting of the variances since there is no detriment to the public good and the requested variance will result in a residential dwelling in character with other new residential construction in the Town.

DECISION

It is the unanimous decision of the Board of Adjustment of the Town of Selbyville that a variance from the 30 foot rear yard setback requirement imposed by Section 200-35.G of the Zoning Code is hereby granted for Applicant's property located on Polly Branch Road, Selbyville, Delaware, and identified as Sussex County Tax Map and Parcel No. 533-16.00-81.01. More specifically, Applicant is hereby permitted to reduce the rear yard setback to 15 feet, rather than the 30 feet required by Section 200-35.G of the Zoning Code.

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SIGNATURES TO FOLLOW ON NEXT PAGE]

BOARD OF ADJUSTMENT OF
THE TOWN OF SELBYVILLE

By: Clifton C. Murray
Clifton C. Murray, Mayor/Chair

By: Clarence W. Tingle, Jr.
Clarence W. Tingle, Jr., Member

By: Mary R. Schrider-Fox
Mary R. Schrider-Fox, Member/Town Solicitor

Date Filed with Town: 9/12/22

Date Mailed/Emailed to Applicants: 9/13/22